

# **EXHIBIT B**

## **(Part 1)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
JEFFREY MARSHALL, : 98-CV-1606	
Plaintiff, : :	
: :	
- versus - : U.S. Courthouse	
: Brooklyn, New York	
CHARLES GREINER, et al., : :	
Defendant : July 25, 2002	
-----X	

TRANSCRIPT OF CIVIL CAUSE FOR EVIDENTIARY HEARING  
BEFORE THE HONORABLE EDWARD R. KORMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: **Bruce Barket, Esq.**

For the Defendant: **Caroline Donhauser, Esq.**  
**Paul Demartini, Esq.**

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Proceedings

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1                   THE CLERK: Civil Cause for a Habeas  
2                   Corpus Evidentiary Hearing, Marshall v.  
3                   Greiner, docket number 98-CV-1606.

4                   Counsel, please state your appearances  
5                   for the record.

6                   MR. BARKET: For Mr. Marshall, Bruce  
7                   Barket, B-a-r-k-e-t.

8                   Good afternoon, Judge.

9                   THE COURT: Good afternoon.

10                  MS. DONHAUSER: And for the  
11                  respondent, Caroline R. Donhauser,  
12                  D-o-n-h-a-u-s-e-r.

13                  MR. DEMARTINI: Paul Demartini  
14                  D-e-m-a-r-t-i-n-i.

15                  THE COURT: Why don't you have the  
16                  witness come in and take a seat.

17                  Did you get your boots back?

18                  THE DEFENDANT: They argued with me  
19                  again last night, Judge.

20                  THE COURT: But did they give it to  
21                  you -- you're wearing them now.

22                  THE DEFENDANT: Yeah, he said no order  
23                  was there. Some Lieutenant, I guess -- he  
24                  wear a white shirt -- if I'm not mistaken, it  
25                  was a white shirt, he said when the judge

Proceedings

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1 gives an order, then there won't be no more  
2 problem but if you ain't got an order,  
3 (inaudible).

4 My leg swelled up and something was  
5 wrong. He said, you're going to court in the  
6 morning, you better have an order.

7 MR. BARKET: Apparently, he left the  
8 boots on last night.

9 THE COURT: They did?

10 MR. BARKET: They did leave the boots  
11 on.

12 THE COURT: Okay.

13 THE DEFENDANT: They took them but  
14 they didn't --

15 THE COURT: They gave them back.

16 THE DEFENDANT: You see my leg is  
17 swollen up. They want the Court to make an  
18 order.

19 (Pause in proceeding)

20 THE COURT: Let's go.

21 THE COURT: Do you want to state your  
22 name.

23 THE WITNESS: Yes, Michael, middle  
24 initial F, last name Vecchione,  
25 v-e-c-c-h-i-o-n-e.

Vecchione - Direct - Barket

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1 MR. BARKET: May I proceed, Judge?

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. BARKET:

5 Q. Good afternoon, sir.

6 A. Good afternoon.

7 Q. You are currently employed with the  
8 Kings County District Attorney's Office?

9 A. Yes, I am.

10 Q. How long have you been so employed?

11 A. Presently, almost ten years -- a  
12 little over ten years.

13 Q. And what's your current position?

14 A. I'm chief of the rackets division.

15 Q. And in 1993, what was your position?

16 A. I was in the homicide bureau. It was  
17 called the trial cadre then and I was in  
18 charge of homicide trials.

19 Q. Okay. You say a trial cadre. Is that  
20 another term for bureau?

21 A. Yeah, it was just the district  
22 attorney's name for that group of people.

23 Q. Okay.

24 A. And you were the prosecutor who tried  
25 the case of Robert Cabeza and Jeffrey

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1 Marshall?

2 A. Yes, I was.

3 Q. Did anyone assist you at that or did  
4 you do it yourself?

5 A. I had co-counsel, Sean Courtney, who  
6 is another assistant DA in the office.

7 Q. And Mr. Hollman, did you see him here  
8 yesterday, by the way?

9 A. Yes, I did.

10 Q. What was his relationship with you  
11 professionally in 1993 and 1994?

12 A. I don't know what -- when Mr. Hollman  
13 came into the office but when he did come into  
14 the office, he was an assistant in the bureau  
15 that was in charge of.

16 Q. So, he worked under you?

17 A. Yes.

18 Q. Have you had a chance before coming to  
19 court today to look over the files that are  
20 relevant to this case?

21 A. Some things; yes.

22 Q. And there was some effort to made to  
23 go through and respond to the subpoena I did.  
24 Did you do that or was that done by somebody  
25 else?

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1 A. It was not done by me.

2 Q. If I showed you notes from that file,  
3 would you be able to recognize your  
4 handwriting and the other people's handwriting  
5 there?

6 A. I think so.

7 Q. Do you remember from memory when your  
8 first contact with Cisco Murphy was?

9 A. Yes, I would say that it was about a  
10 month before the trial. I would say that it  
11 was some time in February of 1993.

12 Q. And where did that meeting take place?

13 A. The actual meeting took place in my  
14 office in the municipal building in downtown  
15 Brooklyn.

16 Q. And how was that meeting arranged, if  
17 you know?

18 A. It wasn't arranged. I was in my  
19 office and I received a phone call from a  
20 colleague of mine who was in another office;  
21 the district attorney's office was spread  
22 amongst several buildings at the time.

23 And he was an assistant. His name is  
24 Bjornabe (phonetic) and he was an assistant in  
25 another bureau in the office but he was in 16

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1 Court Street, which was about a block and a  
2 half, two blocks away from the municipal  
3 building.

4 He told me that there was someone  
5 there who was obviously looking for me but had  
6 somehow been directed to him and that he had  
7 something to talk to me about with regard to  
8 the Cabeza case and said he was going to send  
9 him over; was I able to see him. I said send  
10 him over and he did.

11 Q. And how long did that meeting take  
12 place?

13 A. The meeting with Ciscro?

14 Q. Yes.

15 A. I don't really have a recollection. I  
16 don't know.

17 Q. And what did Mr. Murphy tell you at  
18 that time, if you recall? Sum and substance.

19 A. He told me that he knew that I was the  
20 prosecutor on the case involving Cabeza and  
21 Marshall and he told me that he had  
22 information to give me with regard to  
23 Marshall. I believe that he told me that he  
24 was in jail or had been in jail with Marshall  
25 at some point. And that he had some paralegal

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1 background. He, meaning Murphy, had some  
2 paralegal background and that he was working  
3 with Marshall on his cases.

4 And that he said to me that he knew  
5 that in the Cabeza case that there was going  
6 to be some sort of alibi defense. I believe  
7 he told me that Marshall's father was going to  
8 testify to an alibi that he was somewhere  
9 other than outside the liquor store where the  
10 homicide occurred.

11 And that he knew that because he  
12 helped prepare it or helped -- he listened to  
13 it or helped prepare it in some way.

14 Q. Did he mention anything about the  
15 pending criminal cases he had?

16 A. He told me that he had pending  
17 criminal cases, the extent of which I am not  
18 sure. I don't remember what he told me at the  
19 time but I know he told me he had some -- he  
20 had criminal cases pending.

21 Q. Did you take any notes of that  
22 meeting?

23 A. I think the only notes that I took  
24 were contact information. His name, his  
25 address, that kind of thing. I may have taken

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1 his lawyer's name down but I did not take  
2 anything in substance down as to what -- I  
3 didn't take anything of the substance of what  
4 he was telling me.

5 Q. When was the next point --

6 THE COURT: And when in point of time  
7 was that?

8 THE WITNESS: I'm sorry, Judge?

9 THE COURT: When in point of time was  
10 this meeting?

11 THE WITNESS: In relation to the  
12 trial?

13 THE COURT: In relation to the trial,  
14 yes.

15 THE WITNESS: It was about a month  
16 before the trial, I believe. It was in  
17 February.

18 THE COURT: So, when this meeting  
19 occurred, had he already been charged with  
20 rape?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And it was -- this  
23 was the meeting that was held at his request?

24 THE WITNESS: It was the meeting that  
25 was held as a result of him showing up at

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1 another part of the DA's office and then he  
2 was ultimately directed to me.

3 THE COURT: Okay.

4 THE WITNESS: Yes.

5 Q. Did you ask him who his lawyer was in  
6 the pending cases?

7 A. I probably did but I -- you know, I  
8 don't recall exactly every part of the meeting  
9 but I probably did. I think I would have.

10 Q. Could you take a look at -- I assume  
11 that the --

12 MS. DONHAUSER: If you can just show  
13 me what you're going to show him.

14 MR. BARKET: Well, I don't know, but  
15 the original note. I don't know what his  
16 handwriting is.

17 Q. Your notes from that meeting, you said  
18 there were some notes, some contact  
19 information?

20 A. Yes, I believe so.

21 Q. Did you -- have you looked at that in  
22 the last --

23 A. Yes.

24 Q. -- couple of days --

25 A. Yes.

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11

1 MS. DONHAUSER: Excuse me.

2 Q. -- in preparation for your testimony?

3 A. Yes.

4 MS. DONHAUSER: Can you --

5 MR. BARKET: It might be easier if he  
6 identifies it, rather than -- you know --

7 MS. DONHAUSER: All right. Is there  
8 something that you want to --

9 MR. BARKET: Yes.

10 MS. DONHAUSER: If you want to --

11 MR. BARKET: I just don't know which  
12 one.

13 MS. DONHAUSER: You think that might  
14 be it but you can ask.

15 MR. BARKET: Okay.

16 Could I, Judge, mark it?

17 THE COURT: Yes, go ahead. There it  
18 is. There's the sticker. The white sticker  
19 right there.

20 MR. BARKET: Right here?

21 MS. DONHAUSER: And you have a copy of  
22 that, Bruce?

23 MR. BARKET: I think I do, yes.

24 MS. DONHAUSER: Yes.

25 MR. BARKET: I think we're up to 7,

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12

1 Judge.

2 (Petitioner's Exhibit 7 marked for  
3 identification)

4 MR. BARKET: Is it okay if I just put  
5 this right into evidence?

6 THE COURT: Yes.

7 MS. DONHAUSER: I guess.

8 THE COURT: All right. It's in  
9 evidence.

10 (Petitioner's Exhibit 7 marked in evidence)

11 BY MR. BARKET:

12 Q. Can you take a look at what's been  
13 marked as Petitioner's 7.

14 A. Yes.

15 Q. Do you recognize the handwriting?

16 A. Yes.

17 Q. Is that your handwriting?

18 A. Yes.

19 Q. Okay.

20 Now, are those the notes you took from  
21 that initial meeting?

22 A. Yes, I think that there are things on  
23 here that I -- that were put on this piece of  
24 paper after the meeting. For instance, he was  
25 -- I don't think I put everything -- I don't

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1 think everything that's on here came about as  
2 a result of that particular meeting.

3 The pencil marks, the pencil -- the  
4 things that are in pencil, certainly did. I  
5 don't recall when I wrote down an inmate  
6 number in the Brooklyn House of Detention, 8th  
7 Floor, 8 lower. I don't recall when I did  
8 that but the handwriting is mine; yes.

9 Q. Well, he clearly wasn't in the  
10 Brooklyn House at that time.

11 A. No, he wasn't, he was sitting across  
12 my desk.

13 Q. Now in the upper right hand corner of  
14 that document, there are some indications of  
15 an attorney Juan Fiol --

16 A. Yes.

17 Q. -- with a phone number.

18 A. Yes.

19 Q. What does that say?

20 A. Lawyer Juan -- it's spelled here,  
21 F-o-i-l. I think it's F-i-o-l, in -- that's  
22 the correct spelling but I believe that he  
23 gave me that.

24 And there's a telephone number which I  
25 recognize as being a Legal Aid telephone

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1 number at the time and it says Legal Aid on  
2 it.

3 Q. So, does that refresh your memory as  
4 to whether or not ---

5 A. Yeah, I think it --

6 Q. -- he -- you actually did ask for --

7 A. Yes.

8 Q. ---- and received his lawyer's phone  
9 number?

10 A. Yes.

11 Q. Can I just seek that for a second? I  
12 want to find my copy of that. Thank you.

13 THE COURT: You don't have to do that.  
14 Just ask from that document. You don't have  
15 to worry about a search for your copy. What  
16 difference does it make?

17 Q. There's also a notation here that says  
18 parole -- it looks like parole officer with a  
19 name and number.

20 A. Yes.

21 Q. Okay.

22 Does that indicate that he also told  
23 you he was on parole at the time?

24 A. Yes.

25 Q. And there's an ADA name written in

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15

1 pen --

2 A. Uh-huh.

3 Q. -- with sex crimes written next to it  
4 in pencil.

5 A. Yes.

6 Q. Who is that?

7 A. Avery Melman (phonetic) is the name of  
8 the assistant and I believe that he was the  
9 assistant in sex crimes who had the case --  
10 who had Murphy's case.

11 Q. Do you know the next time that you met  
12 with Mr. Murphy?

13 A. I believe the next time I met with him  
14 was the day that he testified in the Cabeza  
15 trial.

16 Q. Did you prepare any orders to produce,  
17 to have him brought over from the Brooklyn  
18 House of Detention?

19 A. For that day?

20 Q. Yes.

21 A. I must have. I --

22 Q. How about for any other day?

23 A. Yes, I believe so. I've seen -- in  
24 preparation for this, I've seen some orders  
25 that were prepared; yes.

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1 Q. Sorry.

2 Now, could I -- March 17 is day he  
3 testified; right?

4 A. Yes.

5 Q. Do you recall that being a Wednesday?

6 A. No, I don't recall the day of the  
7 week; no.

8 Q. Judge, I checked -- I have a universal  
9 calendar. It's a -- I would ask the Court to  
10 take judicial note, it's --

11 MS. DONHAUSER: We agree.

12 MR. DEMARTINI: We checked also. It's  
13 a Wednesday.

14 MS. DONHAUSER: We also checked. The  
15 17th was a Wednesday.

16 Q. Could you take a look at what I've  
17 marked as Petitioner's 8 and 9 and I'm going  
18 to ask you if these are two orders to produce  
19 that you prepared?

20 MS. DONHAUSER: We're looking at two  
21 orders to produce.

22 A. They were orders to produce --

23 Q. When I say prepared, did you sign  
24 them?

25 A. One of the two; yes.

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1 Q. And which one would that be?

2 A. Number 9.

3 Q. And that requests Mr. Murphy's  
4 production for what day?

5 A. The 12th of March.

6 Q. That would be that Monday?

7 A. I don't know.

8 Q. Excuse me, no. That would be the  
9 Friday before, March 12.

10 MS. DONHAUSER: March 12 --

11 MR. DEMARTINI: Is the Friday.

12 MS. DONHAUSER: -- is a Friday. We  
13 stipulate to that.

14 Q. So, you put in a request that  
15 Mr. Murphy be brought over from the jail on  
16 March 12. Did you meet with him on that day?

17 A. I don't recollect meeting with him,  
18 other than the two times that I've just told  
19 you.

20 Q. But that is an order to produce to  
21 have him brought over on that day.

22 Is that right?

23 A. It's an order to produce to take him  
24 out of the Brooklyn House of Detention; yes.

25 Q. Was he taken out of the Brooklyn House

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1 of Detention?

2 A. On which day?

3 Q. March 12.

4 A. I have no recollection of that.

5 Q. What was the process at the time, once  
6 you got -- fill out the order to have him  
7 taken out, what would have happened to him?

8 A. Depending on what he was being taken  
9 out for.

10 Q. Well, what would he have -- what were  
11 you having him taken out for on the 12th?

12 A. There were only two -- there would  
13 only be two purposes; one for me to speak to  
14 him in my office in preparation for his  
15 testimony or to be taken out to be brought to  
16 the courthouse to testify.

17 Q. Now he was going to be an alibi  
18 rebuttal witness.

19 Is that correct?

20 A. Yes.

21 Q. So, there would have been no purpose  
22 for him testifying until after Mr. Brackett  
23 had testified.

24 Is that correct?

25 A. That's correct.

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1 Q. Do you recall what date Mr. Brackett  
2 testified?

3 A. I believe he testified the same day as  
4 Mr. Murphy.

5 MR. BARKET: Could I have the  
6 originals of this, please? In the meantime,  
7 let me just --

8 Q. The copy -- was it the practice of  
9 your office to save all the signed copies of  
10 the orders to produce or did you save copies;  
11 sometimes you signed them, sometimes you  
12 didn't?

13 A. Well, that's two different questions.  
14 What are you asking me? I'm not sure what  
15 you're asking me.

16 Q. In other words, you said that the  
17 order to produce for the 12th, the copy that  
18 was found in your file, what you signed on  
19 March 11.

20 Is that correct?

21 A. Yes.

22 Q. Now on March 11 --

23 THE COURT: Could you just help me  
24 because I was talking to my law clerk. The  
25 significance of March 11 --

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20

1 MR. BARKET: That's the date he signed  
2 the order to produce for March 12.

3 THE COURT: Which was the date of the  
4 -- the date that -- what happened on the 12th?

5 MR. BARKET: The 12th was Friday.

6 Mr. Murphy didn't testify until the 17th.

7 THE COURT: I see.

8 BY MR. BARKET:

9 Q. Now also on the second exhibit, which  
10 is Petitioner's 8, asked that Mr. Murphy be  
11 produced on March 15, that copy is unsigned.

12 Is that right?

13 A. This copy that you're showing me now?

14 Q. Yes.

15 A. Yes, this is unsigned; yes.

16 Q. Does that mean that he never signed  
17 it, you never made the request that be  
18 produced on Monday or that an unsigned copy  
19 was stuck in the file and you signed the  
20 original for the Court?

21 A. I don't know. It could be either.

22 Q. Could you look at the last page of  
23 that document?

24 A. Yes, I've seen it.

25 Q. What is that?

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1       A. This is a work order that the  
2 paralegals would give to our detective  
3 investigators to tell them what it is is  
4 necessary -- what they needed to do for a  
5 particular trial or an investigation. So,  
6 that's what this is.

7       Q. And what does that say? What was the  
8 reason for his production on March 15?

9       A. It says -- March 15? It's not March  
10 15.

11       Q. No, for his production on the 15th,  
12 what was the reason for his production that  
13 day?

14       A. This is not dated on the 15th. This  
15 work order is dated the 16th and the date  
16 required, meaning the date that the witness  
17 was required is the 17th.

18       Q. And what does it say?

19       A. Please bring Ciscro Murphy from pens  
20 to here for trial prep.

21       Q. And that was attached in your file to  
22 the order requesting his production on the  
23 15th?

24       A. I have no idea. It's attached here.  
25 I don't know where it was attached in my file.

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1 MR. BARKET: Can I have a stipulation  
2 from the prosecutor's office that I got copies  
3 as they were from their office?

4 MS. DONHAUSER: I believe that when we  
5 looked at them, all the work orders were all  
6 together, which is generally the practice --

7 MR. BARKET: So --

8 MS. DONHAUSER: -- in the office.

9 MR. BARKET: I guess my question is,  
10 is the work order that's attached here on  
11 Petitioner's 8, is it the same as it was in  
12 the file?

13 MS. DONHAUSER: It was -- to my --  
14 best of my recollection and I haven't brought  
15 the thing with me, but to the best of my  
16 recollection, all the things that you've been  
17 showing Mr. Vecchione, the two orders to  
18 produce, the signed and the unsigned one, and  
19 the work order, are all either stapled or  
20 paper clipped together in the file. They're  
21 all together in the file.

22 Q. Was there a work order to your  
23 knowledge to produce an order -- an order to  
24 produce, having him produced for the 17th?

25 A. There must have been because he came

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23

1 to the supreme court. So, we would not have  
2 been able to get him out of the Brooklyn House  
3 without a -- what we call Damiani (phonetic)  
4 orders, which are these orders to produce, so-  
5 to-speak.

6 Q. Didn't he have his own court date that  
7 day?

8 A. I believe he did; yes. But in a  
9 different --

10 Q. So, he wouldn't have been produced for  
11 the court, his own court date of -- no?

12 A. No, not in that building.

13 MS. DONHAUSER: Now you want this?

14 MR. BARKET: Yes.

15 A. He was -- do you want me to just  
16 explain?

17 Q. No, you were -- there was two  
18 different supreme court buildings --

19 A. Yes.

20 Q. -- at that time; one was at 360 Adams?

21 A. Yes.

22 Q. And one was at 120 Schermerhorn?

23 A. Schermerhorn; yes.

24 Q. Excuse me, I'm sorry.

25 A. And where were you?

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24

1           A.    We were on trial at 360 Adams Street.  
2           Mr. Murphy's case was on at 120 Schermerhorn  
3           Street.

4           MR. BARKET:    Can I have the original?

5           MS. DONHAUSER:   I want to just make a  
6           statement before you take this package.

7           Your Honor, the document that  
8           Mr. Barket is interested in is one sheet,  
9           reversed two sides with two things stapled to  
10          it.    When I found this in the trial folder,  
11          all these sheets were stapled together.  
12          There's some papers, as I informed Mr. Barket,  
13          that are part of this stapled package, which I  
14          have not shown Mr. Barket because it has to do  
15          with other witnesses.   It's privileged  
16          information and so, I would just ask that when  
17          we put it into evidence, that we just focus on  
18          this one sheet.

19           THE COURT:    Okay.

20           MS. DONHAUSER:   Here you go.

21          BY MR. BARKET:

22          Q.    Did you at any point request any of  
23          the pending cases -- the files of his pending  
24          cases?

25          A.    When?

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25

1 Q. Prior to his testimony on March 17?

2 A. I probably did it back when he first  
3 came into my office; yes. That would be my  
4 practice.

5 Q. Could you take a look at -- I guess we  
6 should -- do you mind if we mark the original?

7 MS. DONHAUSER: You can mark the  
8 original.

9 THE COURT: You'll detach what you  
10 want to have detached. We're marking in what  
11 page? It's right there. I don't know what  
12 you did with it.

13 MR. BARKET: I think I took them, so I  
14 wouldn't have to keep walking back and forth  
15 but --

16 MS. DONHAUSER: No, you don't want the  
17 yellow ones, we're using the yellow ones.

18 MR. BARKET: I want the white ones.

19 One second, Judge. I am sorry.

20 THE COURT: Just mark it in your own  
21 handwriting.

22 MR. BARKET: Here it is.

23 (Petitioner's Exhibit 10 marked for  
24 identification)

25 BY MR. BARKET:

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26

1 Q. Could you take a look at what's been  
2 marked now as Petitioner's 10?

3 A. Just the yellow piece?

4 Q. No, actually I want you to look at the  
5 yellow piece and the message that's stapled to  
6 it.

7 A. Yes, okay.

8 Q. Now the -- do you recognize the  
9 handwriting in the yellow piece?

10 A. No, I don't.

11 Q. Do you recognize the message on top of  
12 that?

13 A. Recognize it in what way? Do you mean  
14 in terms of --

15 Q. Do you know what that is?

16 A. This piece of paper is the kind of  
17 message paper that we were using back at the  
18 DA's office at that time; yes.

19 Q. And --

20 A. So, if someone called the office --  
21 called me or called someone in the office and  
22 a message was taken, it would be written on  
23 one of these types of -- one of these pieces  
24 of paper.

25 Q. And it says Ciscro -- it says -- is

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27

1. that Jessica Prince?

2. A. Jessica Prince.

3. Q. Yes.

4. A. Yes, she was someone that worked in  
5. the office at the time.

6. Q. Okay.

7. And orange zone is kind of a bureau  
8. that you have?

9. A. Yes.

10. Q. And it says "CO Ciscro Murphy is on  
11. for Wednesday, wants case folder."

12. A. Right, okay.

13. Q. Is that the assistant calling you or  
14. Mr. Courtney asking that Murphy's case folder  
15. be returned to them?

16. A. It's the assistant calling either one  
17. of us or my paralegal asking for the case  
18. folder to be brought back to or brought to the  
19. orange zone; yes.

20. Q. Now underneath the message, there's  
21. some words that are written. It says, "Sex  
22. crimes case, CW never came forward. Case was  
23. not indicted."

24. A. Yes, I see that.

25. Q. Do you know when these notes were

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1 taken and when this was done?

2 A. No, I didn't do this. So, I don't  
3 know.

4 Q. Now at the bottom there it says  
5 Damiani, which is the order to produce?

6 A. Yes, that's this -- what you've marked  
7 as People's 8 and 9; yes.

8 Q. "Damiani and Ciscro for 3/12/93 and  
9 then again Damiani for 3/17 pen. Ciscro case  
10 is on tomorrow in part 31."

11 A. Right.

12 Q. So, those are notes to or from  
13 somebody indicating Mr. Murphy should be  
14 produced for those two days.

15 Is that right?

16 A. Yup -- yes, excuse me, I'm sorry,  
17 Judge.

18 Q. Now, did you prep Mr. Murphy on the  
19 17th for his testimony?

20 A. I spoke to him. I didn't prep him in  
21 the terms of going over his testimony but yes,  
22 I spoke to him before he got on the stand;  
23 yes.

24 Q. Where did that conversation take  
25 place?

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1       A. It took place -- I believe we were  
2 using a fourth floor courtroom at 360 Adams  
3 Street. So, it took place in a room that was  
4 in the corridor of the courthouse and it was  
5 used for just that purpose, to speak to  
6 witnesses and so, it was on the fourth floor  
7 of the courthouse.

8       Q. Did Mr. Murphy ever give you a  
9 statement, a written statement?

10      A. No, not to my -- I don't -- no, I  
11 don't think so; no.

12      Q. Could you take a look at what I'm  
13 marking now as Petitioner's 11.

14      (Petitioner's Exhibit 11 marked in evidence)

15      MS. DONHAUSER: Do you want to tell us  
16 what it is?

17      MR. BARKET: Yes, the parole letter.

18      MS. DONHAUSER: What (inaudible)?

19      Q. I'm going to ask if you recognize  
20 this.

21      A. Yes, I recognize it.

22      Q. What is that?

23      A. This is a letter that I wrote to the  
24 New York State Division of Parole on behalf of  
25 Mr. Murphy.

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1 Q. And in that -- in there it's a  
2 recommendation that he be released.

3 Is that correct?

4 A. I don't see that. The answer is no.

5 Q. Is it an indication to the parole  
6 board about Mr. Murphy's cooperation with your  
7 office?

8 A. Yes, it is.

9 Q. Asking that he be given some kind of  
10 consideration for that?

11 A. I don't see that; no.

12 Q. Well, is there a part in there that  
13 says he gave a detailed statement to the  
14 district attorney's office?

15 A. No.

16 Q. Can I have that back for one second?

17 THE COURT: Can I see that letter?

18 THE WITNESS: Sure.

19 THE COURT: All right.

20 Q. There's a part that's highlighted  
21 there. Could you read that out loud to the  
22 Court, please?

23 A. "Subsequently, Mr. Murphy gave a  
24 detailed statement tying Mr. Marshall directly  
25 to the crime."

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1 Q. And?

2 A. "He then testified at the trial, which  
3 resulted in convictions of both defendants."

4 Q. So, where's the detailed statement you  
5 told the parole board Murphy gave?

6 A. He came into my office, sat down  
7 across from my desk and spoke to me and told  
8 me what he knew about the fake alibi that your  
9 client and his father had concocted for the  
10 trial.

11 Q. So the detailed statement that you  
12 said he gave to Mr. -- that Mr. Murphy ave to  
13 you was that oral conversation you had with  
14 him back in February?

15 A. Yes.

16 Q. Now this was an individual who you  
17 said --

18 THE COURT: Could I ask you, did you  
19 believe that his testimony -- Ciscro Murphy's  
20 testimony resulted in the conviction of the --  
21 of Mr. Marshall?

22 THE WITNESS: That it resulted in the  
23 conviction?

24 THE COURT: Well, isn't that what --  
25 the words that you just read?

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1                   THE WITNESS: No, I didn't read that,  
2 Judge.

3                   THE COURT: I'm sorry, what does it  
4 say?

5                   THE WITNESS: "Subsequently,  
6 Mr. Murphy gave a detailed statement tying  
7 Mr. Marshall directly to the crime."

8                   THE COURT: Right.

9                   THE WITNESS: "He then testified at  
10 the trial, which resulted in convictions of  
11 both defendants."

12                  THE COURT: I see.

13                  Q. Does it also say in there that but for  
14 his testimony, Mr. Marshall might very well  
15 have escaped conviction or words to that  
16 effect?

17                  A. The words exactly are, "There is no  
18 doubt that without the assistance of  
19 Mr. Murphy, Jeffrey Marshall could have  
20 escaped punishment for this vicious crime."

21                  THE COURT: Do you believe that?

22                  THE WITNESS: I believe that he  
23 assisted in --

24                  THE COURT: Is that an accurate --

25                  THE WITNESS: -- me getting the

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1 conviction; yes.  
2  
3  
4  
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THE COURT: Is that an accurate  
statement?

THE WITNESS: Yes, it is.

MS. DONHAUSER: Judge, you have my  
running objection to that.

THE COURT: You could have it.  
Overruled.

BY MR. BARKET:

Q. Now this witness, who you've described  
to the parole board as -- I don't want to put  
words in your mouth but important to  
Marshall's conviction, is that a fair  
characterization?

THE COURT: It speaks for itself.

MR. BARKET: Okay.

THE COURT: Let's go on.

Q. That witness, Mr. Murphy, you're  
telling the Court now that you never took and  
there doesn't exist a written statement about  
what -- of Mr. Murphy's account?

A. That's correct.

Q. And that the only meeting you had with  
him regarding the substance of his testimony  
was in February and then the day of his

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1 testimony.

2 A. That's correct.

3 Q. And despite two orders to produce on  
4 the 12th and the 15th, you don't recall  
5 meeting with him on either of those two days.

6 A. I don't believe I did.

7 Q. Now, did you tell Mr. Fiol that you  
8 were producing Mr. Murphy in order to have  
9 Mr. Murphy's attorney present while you were  
10 prepping him?

11 A. At the courthouse?

12 Q. Yes.

13 A. I don't recall exactly but I must  
14 have, because I would not have done it any  
15 other way.

16 Q. So, your memory -- do you have a  
17 memory of speaking with Mr. Fiol?

18 A. No, I don't have -- of that day -- in  
19 that day or on that day?

20 THE COURT: Look, you were speaking  
21 with his client about testifying in a criminal  
22 case.

23 THE WITNESS: Yes.

24 THE COURT: His client himself was  
25 facing charges for rape and gun possession.

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1 THE WITNESS: Yes.

2 THE COURT: Did you discuss with him  
3 the fact that you were having meetings with  
4 Mr. Murphy and that you intended to have him  
5 testify at the trial of the petitioner?

6 THE WITNESS: I don't recall that  
7 particular day. I do recall --

8 THE COURT: I don't mean that -- I  
9 mean during this period, was Mr. Fiol --

10 THE WITNESS: I do --

11 THE COURT: -- informed, essentially,  
12 that his client, who was facing criminal  
13 charges, was essentially cooperating with you,  
14 that you were taking a statement from him and  
15 preparing him to testify at trial and you  
16 intended to call him as a trial witness.

17 THE WITNESS: I believe not to that  
18 extent. I did have conversations -- at least  
19 one conversation I can recall with Mr. Fiol  
20 before the 17th, where I informed him of  
21 Mr. Murphy coming into the office and giving  
22 me the information. And that I had not made  
23 up my mind at any time. In fact, I didn't  
24 make up my mind until I actually spoke to him  
25 that -- on the 17th that I was even going to

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1 use him.

2 But Mr. Fiol was aware of the fact  
3 that he had come in -- he, meaning Murphy, had  
4 come into the office to offer me the  
5 information that he offered to me; yes.

6 Q. He was made aware that he was going to  
7 come into the office?

8 A. No, he was made aware of the fact that  
9 he had -- that Mr. Murphy had come into the  
10 office.

11 Q. Well, did you tell him that you were  
12 filing an order to produce, to have him  
13 brought over on the 12th, 15th and 17th?

14 A. My practice would be, yes. Do I have  
15 an independent recollection of that; no. But  
16 my practice would be, yes, I wouldn't have  
17 done it any other way.

18 Q. Now during the time that you -- when  
19 you spoke with Mr. Fiol and you said you  
20 wanted to -- you told him, obviously what this  
21 was about; that Murphy had some evidence that  
22 would be helpful to you in the prosecution of  
23 Cabeza and Marshall.

24 A. Uh-huh.

25 Q. Is that correct?

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1 A. Of course I would have.

2 Q. Now, Mr. Murphy, at the time, as we  
3 know now, was looking at two pending  
4 indictments; one for rape and one for criminal  
5 possession of a weapon.

6 Is that right?

7 A. Yes.

8 Q. And without going too far into the  
9 law, he was a mandatory, persistent, violent  
10 felony offender.

11 Is that right?

12 A. Yes.

13 Q. What that meant was that if he was  
14 indicted, the only legal plea would include a  
15 life sentence; six to life, eight to life,  
16 whatever it is for the various crimes.

17 Is that right?

18 A. Yes.

19 Q. And he had been indicted, as we know  
20 now, on both charges on March 17.

21 Is that correct?

22 A. I believe so; yes.

23 Q. And that --

24 A. I know that he was indicted on the gun  
25 case. I believe that he was indicted on the

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1 other case, as well, but I am -- I think so,  
2 but I am not 100 percent certain.

3 Q. Now, Mr. Fiol, -- excuse me. You were  
4 trying a case involving a New York City Police  
5 Officer and a co-defendant for murder.

6 Is that right?

7 A. Yes.

8 Q. And this is a case that at the time  
9 had some notoriety.

10 Is that true?

11 A. Yes.

12 Q. And you were the bureau chief in the  
13 homicide bureau.

14 Is that right?

15 A. So-to-speak; yes.

16 Q. Now, did Mr. Fiol when you told him  
17 that this individual who was looking at a life  
18 sentence for two separate indictments and that  
19 he had information that was helpful against  
20 Mr. Marshall, did Mr. Fiol say well, geez, I  
21 would like a deal, I would like some break on  
22 his pending cases?

23 A. I don't have a recollection of that.  
24 He probably did but I don't recall it.

25 Q. When you say he probably did, did you

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1 convey that information to Mr. MARshall's  
2 defense attorney that Mr. Murphy's attorney  
3 was seeking some kind of benefit from Murphy's  
4 testimony?

5 A. He wasn't seeking any benefit.

6 Q. When he asked you, probably did --

7 A. I said I -- Mr. Barket, let me just  
8 make myself clear. You're asking me to recall  
9 a conversation that I had with Mr. Fiol that I  
10 do not recall. I would not have spoken to  
11 Mr. Murphy -- I mean, after I spoke to  
12 Mr. Murphy, I would have contacted Fiol to  
13 tell him that Murphy was in my office. Point  
14 of the matter is, Mr. Murphy was not asking  
15 for anything.

16 Q. My question --

17 A. So --

18 Q. -- to you is, did Mr. Fiol ask you for  
19 a benefit for his client?

20 A. I don't recall that.

21 Q. Now you said before he probably did.

22 A. Only because --

23 Q. What would he --

24 A. -- I used to be a defense attorney,  
25 Mr. Barket, and I would have done that if I

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was the defense attorney.

Q. Any defense attorney in this situation would have done that.

A. Right.

Q. Correct?

THE COURT: Any competent one.

Let's go.

Q. Now you indicated -- could you take a look at this yellow piece of paper again?

A. Yes.

Q. What's been marked, I think, as 11.

Is that right?

A. 10.

Q. 10. Up at the top, there's something that says orange zone. The defendant, Cisco Murphy is --

THE COURT: Before we get to that, you have to understand, I've been in this business for a long time, too, both as a prosecutor and a judge.

THE WITNESS: Yes, sir.

THE COURT: And what happened here seems to be to be unusual in the extreme in terms of this guy essentially facing charges and testifying without any kind of promise and

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1 his lawyer, essentially permitting that to  
2 happen without asking for some consideration.  
3 And that's sort of what troubles me about this  
4 case. I mean, it's just not --

5 THE WITNESS: Judge, I --

6 THE COURT: It's just not the way I've  
7 ever heard of --

8 THE WITNESS: I understand.

9 THE COURT: -- anything happening.

10 THE WITNESS: I wish that I had a  
11 better recollection of the time. I just  
12 don't. I know that Ciscro Murphy did not ask  
13 for anything. I know that. And I just don't  
14 have a recollection --

15 THE COURT: Well, let's --

16 THE WITNESS: -- any better.

17 THE COURT: -- put it this way. There  
18 came a point where he asked for something, or  
19 at least his lawyer did becuase before the  
20 second trial, there was a formal agreement  
21 written --

22 THE WITNESS: Yes, that's true.

23 THE COURT: -- which, if my  
24 recollection serves me correctly, also  
25 referenced his testimony at the first trial

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1 but I could be wrong about that.

2 THE WITNESS: I don't remember. I  
3 mean, I --

4 MR. BARKET: I think it did, Judge.  
5 It referred to the indictment.

6 THE WITNESS: It may.

7 MS. DONHAUSER: I think it refers  
8 actually to the indictment number that Jeffrey  
9 Marshall had before it was consolidated with  
10 Cabeza.

11 MR. BARKET: Right, it --

12 MS. DONHAUSER: It's actually a  
13 completely different indictment number.

14 MR. BARKET: -- was a second.

15 MS. DONHAUSER: I think it's clear  
16 from the context of the agreement, however,  
17 when it talks about the pending indictment  
18 numbers, that it's clear that that's a  
19 misprint. But in any event, we'll make that  
20 argument later.

21 THE WITNESS: The cooperation  
22 agreement that you're referring to, Judge,  
23 talks about his cooperation for the future  
24 cases.

25 THE COURT: No, I know, but he would

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1 have asked -- it just strikes me as being  
2 unusual that he would have asked for it for  
3 the subsequent cases but in this case, his  
4 lawyer would not have attempted to have gotten  
5 some promise relating to his testimony.

6 THE WITNESS: Judge, I can -- I recall  
7 when having to prepare for this, I can recall  
8 back to when Murphy came into the office and  
9 essentially handed me the piece of evidence,  
10 not asking for anything. It doesn't happen  
11 very often for a prosecutor. It happened  
12 and --

13 THE COURT: Well, that could happen.  
14 I don't -- it wouldn't shock me if something  
15 like that happened, particularly if you accept  
16 his testimony about what motivated him to do  
17 it.

18 THE WITNESS: Yes.

19 THE COURT: But whatever motivated to  
20 do it on his own, once his lawyer gets a whiff  
21 of what's going on here, he's going to say  
22 wait a minute, you know, you're facing two  
23 charges, including, I guess the -- with his  
24 prior criminal record, I mean, he got two to  
25 life when the two cases were consolidated.

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1 THE WITNESS: Yes.

2 THE COURT: So, I assume he was facing  
3 a life sentence.

4 You know, would not attempted to have  
5 to negotiated some benefit for him. Whether  
6 the -- there are two issues; one is whether he  
7 attempted to or the negotiations were going on  
8 and they never came to anything, which would  
9 be relevant at the trial if Murphy testified  
10 and number two, whether any -- you know, any  
11 kind of an understanding had been reached  
12 either with Murphy or the defense lawyer.

13 THE WITNESS: There was no  
14 understanding reached and I don't have any  
15 recollection if -- there were no ongoing  
16 negotiations at the time. I can -- I will  
17 take that to my grave, Judge. There was  
18 nothing on either side -- on either of your  
19 two possibilities.

20 THE COURT: Go ahead.

21 BY MR. BARKET:

22 Q. Before you go to your grave, you just  
23 told us that Mr. Fioli probably asked for some  
24 kind of benefit for his client.

25 A. I could probably --

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1 Q. That was your probable response.

2 A. It's an impossible question to answer  
3 and I'll withdraw --

4 Q. You --

5 A. -- my probable because it was based on  
6 something that I would have done as a defense  
7 attorney and I should not have answered the  
8 question in that way.

9 Q. Now in the orders to produce, there is  
10 an affirmation you fill out.

11 Is that right?

12 A. I believe so; yes.

13 Q. And part of that affirmation indicates  
14 that you will notify the attorney that the  
15 person is being produced.

16 A. That's right.

17 Q. Is that right?

18 A. Correct.

19 Q. So, in order to get him produced, you  
20 have to swear under oath to the Court that you  
21 are going to tell the defense attorney that  
22 person is being produced.

23 Is that right?

24 A. Well, that's not an -- it's an  
25 affirmation not an affidavit but yes; in

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1 essence, yes.

2 Q. And you obviously would have complied  
3 with what you were telling the Court you were  
4 going to do.

5 A. I told you before that I would do  
6 that; yes.

7 Q. Now do you remember Mr. Fiol talking  
8 to you and asking for a misdemeanor in  
9 exchange for Murphy's testimony?

10 A. No, I have no -- I don't recall that.

11 Q. After Murphy testified, did you have  
12 any conversations with Mr. Fiol?

13 A. After he testified?

14 Q. Yes; you eventually worked out a deal  
15 with him.

16 A. Ultimately, yes, of course.

17 Q. Do you remember him being furious with  
18 you, being angry, that you had put him on the  
19 stand before a deal had been worked out?

20 A. No.

21 Q. Could you take a look at the yellow  
22 piece of paper again. I guess it's 10?

23 A. Yes.

24 Q. Up at the top it says, "orange zone,  
25 defendant Ciscro Murphy, file will be

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1 delivered."

2 Do you see that?

3 A. I see it.

4 Q. That's a request and I guess a  
5 notation that the file will be delivered.

6 That's the indictment number 12156/92.

7 Is that right?

8 A. That's what this piece of paper says;  
9 yes.

10 Q. And then there's the note there from  
11 the assistant who had that file requesting it  
12 back.

13 Is that correct?

14 A. I don't know.

15 Q. Well, the message --

16 A. The message says that it wants case  
17 folder but it doesn't mean that we ultimate --  
18 that we originally got it from her.

19 Q. Right, but it appears from these two  
20 pieces of paper, does it not, that somebody in  
21 your bureau, in order to prep for Murphy's  
22 testimony ordered the file, that the file was  
23 delivered and the prosecutor who had the case,  
24 was calling to say look, the case is on  
25 Wednesday, can I have the file.

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1 A. That's what it appears from these  
2 papers; yes.

3 Q. Could I have the file -- that file?

4 MS. DONHAUSER: The Ciscro Murphy --

5 MR. BARKET: Ciscro Murphy, 12156/92.

6 MS. DONHAUSER: This one?

7 MR. BARKET: Yes, the entire file, its  
8 contents as well.

9 MS. DONHAUSER: No.

10 MR. BARKET: Do you have the contents?

11 MS. DONHAUSER: I gave you all the  
12 contents that's marked in your (inaudible).

13 MR. BARKET: Okay, so that --

14 MS. DONHAUSER: Yes, if it's marked  
15 with a 12156/92 it comes from this folder.

16 BY MR. BARKET:

17 Q. Could you take a look at --

18 MS. DONHAUSER: What are you showing  
19 him, Bruce?

20 MR. BARKET: Well, all the contents of  
21 12 --

22 MS. DONHAUSER: Okay.

23 MR. BARKET: -- 156.

24 MS. DONHAUSER: Judge, I just want to  
25 make it clear that that's not the entire

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1       contents of that file.

2                    MR. BARKET: There's just one document  
3                    that I want him to look at.

4                    MS. DONHAUSER: Okay.

5                    Q. In that file, 12156/92, there is a  
6                    NYSIS; isn't there?

7                    A. Yes.

8                    Q. And there would be a NYSIS in that  
9                    file.

10                  A. Yes.

11                  Q. And that would have been a criminal  
12                  rap sheet generated for Mr. Murphy at the time  
13                  of his arrest on the gun charge.

14                  Is that correct?

15                  A. I would assume so, yes.

16                  Q. And that's the file from the notes in  
17                  Marshall's file that you requested and that  
18                  you got.

19                  Is that correct?

20                  A. Yes.

21                  Q. And then when you were in court, and  
22                  the Court asked you to give the NYSIS to  
23                  Mr. Harrison, that's the NYSIS you gave him  
24                  because that's the file you had.

25                  Isn't that true?

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1 A. Yes.

2 THE COURT: Do you have another  
3 question?

4 A. Is there another question?

5 Q. Isn't that true?

6 THE COURT: He answered it.

7 A. Yes, I answer it.

8 Q. Well --

9 A. I said yes.

10 Q. Now that NYSIS does not contain  
11 Marshall's (sic) rape charge; does it?

12 MR. DEMARTINI: Murphy.

13 A. Marshall's rape charge?

14 Q. Murphy.

15 MR. DEMARTINI: Murphy.

16 THE COURT: Murphy.

17 Q. Murphy's rape charge.

18 A. I don't know. Can I see it again?

19 Q. Sure.

20 A. This particular one does not.

21 Q. It would have been impossible actually  
22 to have a NYSIS created in October that would  
23 have reflected the January arrest; correct?

24 A. Of course.

25 Q. There was a 440 motion filed by me

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1 asking for this case, Mr. Marshall's case, to  
2 be reversed back in state court before  
3 Judge Aiello.

4 Do you remember that?

5 A. Yes, I do.

6 Q. And in response to that, your office  
7 prepared some paperwork; didn't it?

8 Is that correct?

9 A. I assume so; yes.

10 Q. Well, in fact, you prepared an  
11 affidavit; didn't you?

12 A. I believe it was an affirmation.

13 Q. Now at that time, the allegations that  
14 I made in the 440 motion are essentially the  
15 same ones that are before this court, that you  
16 -- the same ones were made before this court.

17 Is that correct?

18 MR. DEMARTINI: Objection.

19 A. I don't know.

20 THE COURT: What difference does it  
21 make?

22 MR. DEMARTINI: Unless he read the  
23 papers --

24 THE COURT: What difference does it  
25 make?

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1 MR. DEMARTINI: -- on the habeas.

2 MR. BARKET: The --

3 MS. DONHAUSER: He's not the person  
4 who answered the habeas, your Honor.

5 THE COURT: But it doesn't matter.

6 What's the --

7 MS. DONHAUSER: And nor is he the  
8 person that answered the 440.

9 THE COURT: Why do you want to --

10 Q. Did you fill out an affirmation --

11 THE COURT: Sit down.

12 Q. -- in response to that 440 motion?

13 A. I don't think I filled it out, no, but  
14 I believe an assistant from the appeals bureau  
15 prepared it and I signed it; yes.

16 THE COURT: I assume that the  
17 assistant would have spoken to you --

18 THE WITNESS: Well, of course, Judge;  
19 yes.

20 THE COURT: -- and then prepared t.

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 THE WITNESS: Yes.

24 THE COURT: So --

25 Q. And you read it?

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1 A. Yes.

2 Q. You knew it was going in to respond  
3 to --

4 THE COURT: Will you just show it to  
5 him --

6 A. Yes.

7 THE COURT: Come on.

8 Q. Take a look at it.

9 A. Yes, I know --

10 Q. What does that say about whether or  
11 not you knew of a rape charge when you gave --  
12 when Mr. Marshall's case was tried?

13 A. It says that I did not know that there  
14 were charges pending against Mr. Murphy that  
15 included rape. That's what it says.

16 Q. And that's because the NYSIS that you  
17 had requested came from the first file, the  
18 '92 indictment. It didn't include the rape  
19 charge.

20 Is that correct?

21 A. The NYSID what?

22 Q. The NYSIS that was in Marshall's --  
23 excuse me, the NYSIS that was in Murphy's gun  
24 case was produced in '92 and it didn't include  
25 the rape charge.

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1 A. You asked me about the -- the  
2 documents you just showed me before were the  
3 content of -- yes, the gun case, okay. And  
4 they did not include the rape charge. That's  
5 correct.

6 Q. So, in fact, Mr. Harrison, Jeffrey  
7 Marshall's lawyer was not told of the rape  
8 charge during the trial; was he?

9 A. No, that's incorrect because that's  
10 not the NYSID that I handed Mr. Harrison  
11 during the course of the trial.

12 Q. Where's the -- do you have a marked  
13 copy of the NYSIS you handed him?

14 A. I don't have it. Obviously, I  
15 wouldn't. But I prepared -- before I take a  
16 case to trial, I would run updated NYSID  
17 sheets on everybody who was going to testify  
18 or who was potentially going to testify.

19 And that's what I handed over to  
20 Mr. Harrison. If I am not correct -- if I am  
21 not mistaken, Mr. Harrison referred to it and  
22 talked about the actual arrest that was on the  
23 NYSID sheet.

24 Q. Mr. Harrison testified, whether you're  
25 mistaken or not, is something we'll leave for

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1 the Court to decide.

2 A. Is that a question? I'm not sure.

3 Q. No.

4 A. Oh, okay.

5 THE COURT: No, it's a statement.

6 Could I see the affidavit again.

7 MR. BARKET: Yes, your Honor. It  
8 should be part of the Court's file.

9 THE COURT: I know but I don't -- you  
10 know, the Court's file it's a carton of  
11 documents.

12 MR. BARKET: Right.

13 THE COURT: I'm confused. You saying  
14 this affidavit that to the best of your  
15 recollection, you did not know that the  
16 charges pending against Murphy included rape.

17 THE WITNESS: That's what it says,  
18 Judge. I wish that I could have that back. I  
19 made a mistake.

20 THE COURT: But that would suggest  
21 that you -- that the rap sheet, the NYSIS  
22 sheet that you gave, if you read it -- if it  
23 was an up-to-date NYSIS sheet, then it would  
24 have indicated the rape.

25 THE WITNESS: Yes, the error is in my

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1 signing that without being more careful about  
2 signing it.

3 THE COURT: So this statement, to the  
4 best of my recollection, I did not know that  
5 the charges pending against Mr. Murphy  
6 included rape --

7 THE WITNESS: Yes.

8 THE COURT: -- is a mistake?

9 THE WITNESS: When I read the  
10 minutes --

11 THE COURT: It's a mistake?

12 THE WITNESS: It's a mistake; yes.

13 Q. Now, Mr. Hollman was assigned by you  
14 to try Marshall's two subsequent murder cases.

15 Is that right?

16 A. Yes.

17 Q. Did you tell him that you had a  
18 written cooperation agreement with Mr. Murphy?

19 A. Sure I did.

20 Q. You're sure you did?

21 A. Cooperation agreements with regard to  
22 the two pending cases?

23 Q. Yes.

24 A. I'm -- I must have, absolutely.

25 Q. So you would have told Mr. Hollman.

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1 You wouldn't have lied to him or tried to hide  
2 that fact?

3 A. For -- no, I would not have.

4 Q. Did you receive a letter from  
5 Mr. Hollman --

6 THE COURT: Well, Mr. Hollman  
7 testified that he was not aware of the  
8 agreement that had been entered into before  
9 the second and third trial.

10 THE WITNESS: I can't account for that  
11 testimony, Judge.

12 THE COURT: Well, his explanation, as  
13 I understood it, was that he read the  
14 transcript of the first trial and there was no  
15 agreement.

16 THE WITNESS: It's true, there wasn't  
17 any agreement.

18 THE COURT: But he indicated that you  
19 did not tell him about the -- when you  
20 assigned him to try the case, he said that you  
21 had not told him about this agreement or given  
22 it to him.

23 THE WITNESS: Do you want me to  
24 comment as to why he --

25 THE COURT: Yes.

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1 THE WITNESS: He is incorrect.

2 Q. You would have had no reason to lie  
3 about the existence of an agreement before --

4 A. No.

5 Q. -- right?

6 Did you receive a letter from  
7 Mr. Hollman written by Ralph Pasarero from the  
8 Nassau County District Attorney's Office?

9 A. Yes.

10 Q. And that was a -- you knew at that  
11 time that you received that letter that Mr. --

12 THE COURT: Now I just want to  
13 understand this. If he didn't -- he didn't  
14 disclose during the second and third trial the  
15 existence of this agreement.

16 THE WITNESS: That's what I  
17 understand; yes. I didn't know that until  
18 these proceedings were actually placed. I  
19 didn't -- I know that there two acquittals in  
20 those cases.

21 THE COURT: So, that if -- but if I  
22 understand what you just said, you told him  
23 about it and then he didn't disclose it. I  
24 mean it was harmless error because the guy was  
25 acquitted at the second two trials so, we're

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1 not dealing with -- it's only a kind of a --  
2 you know, kind of a back drop --

3 THE WITNESS: Well --

4 THE COURT: -- for trying to evaluate  
5 what happened here.

6 THE WITNESS: Yes, sir.

7 THE COURT: But essentially, if you're  
8 right, he knew about this written agreement  
9 and he didn't disclose it during two trials  
10 when he had a constitutional and ethical  
11 obligation to disclose it.

12 Is that right?

13 THE WITNESS: Of course he did.

14 THE COURT: Okay.

15 MR. BARKET: The record should reflect  
16 I am returning the -- what's been marked as  
17 Petitioner's 10, the original notes of  
18 Mr. Vecchione.

19 Q. Could you take a look at --

20 MS. DONHAUSER: No, excuse me, that's  
21 a mischaracterization.

22 MR. DEMARTINI: Yes, it's --

23 MS. DONHAUSER: The Petitioner's 10 is  
24 not --

25 MR. BARKET: Whatever the Petitioner's

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1 10 is.

2 MS. DONHAUSER: -- Mr. Vecchione's  
3 notes.

4 MR. BARKET: Whatever Petitioner's 10  
5 is.

6 THE COURT: Well, why don't you say to  
7 make you happy, what is it?

8 MS. DONHAUSER: I don't believe that  
9 Mr. Vecchione was ever asked if any of this  
10 was his handwriting or whether he recognized  
11 the handwriting.

12 MR. BARKET: I think he said he did.

13 THE WITNESS: I was asked and I said  
14 that I didn't recognize the handwriting.

15 MS. DONHAUSER: Okay. So, there you  
16 go.

17 Q. Could I show you what's been marked as  
18 Petitioner's 12.

19 (Petitioner's Exhibit 12 marked for  
20 identification)

21 Q. That's the letter that Mr. Pasarero  
22 wrote to Mr. Hollman.

23 A. Yes.

24 Q. And Mr. Hollman passed that on to you  
25 to reply to?

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1 A. Yes, I believe so.

2 Q. Now you knew at that time that  
3 Mr. Marshall was being prosecuted by  
4 Mr. Pasarero for an attempted murder and a  
5 robbery in Nassau County, which was similar to  
6 things he -- similar to robberies that had  
7 occurred in Brooklyn.

8 A. I wasn't aware of that but I know that  
9 he had a case in Nassau County; yes.

10 Q. Were you aware that the witnesses in  
11 that case were substantially the same as some  
12 of the witnesses you had in your case?

13 A. I believe that there were some in  
14 common; yes.

15 Q. The Stober brothers, Lakisha Smith,  
16 Ciscro Murphy?

17 A. I believe that I knew that some of the  
18 witnesses were in common. If you are asking  
19 me which ones, I am not sure now which ones.

20 Q. And you knew that when Mr. Pasarero  
21 was writing to you, he was writing to you to  
22 prepare for his trial; correct?

23 A. I would assume so.

24 Q. And he specifically asked you whether  
25 or not there -- for any cooperation agreements

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1 between Mr. Stober, Lakisha Smith, Ciscro  
2 Murphy.

3 Is that right?

4 A. Yes.

5 Q. And you responded by telling him that  
6 you did have a cooperation agreement with  
7 Mr. Stober and you included a copy of that in  
8 your reply to Mr. Marshall (sic) --  
9 Mr. Pasarero.

10 Is that correct?

11 A. Yes.

12 Q. And then you replied --

13 A. I believe so. If you show it to me, I  
14 believe I did; yes.

15 Q. And then, in -- well, with Mr. Murphy,  
16 however, you told Mr. Pasarero with respect to  
17 other items, there are no agreements between  
18 this office and Ciscro Murphy.

19 Is that true?

20 A. That's what I wrote; yes.

21 THE COURT: Refresh my recollection  
22 again. Who is Mr. Pasarero?

23 THE WITNESS: Mr. Pasarero is an  
24 assistant district attorney in Nassau -- was  
25 an assistant district attorney in Nassau

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1 County, who had, I think, Mr. Marshall's case  
2 in Nassau County.

3 MR. BARKET: Still is, Judge. That's  
4 the case I tried.

5 THE COURT: Okay.

6 BY MR. BARKET:

7 Q. Could you take a look at what I've  
8 marked as Petitioner's 13? That's the letter  
9 you wrote in 1995.

10 A. Yes, I remember.

11 Q. All right.

12 A. I saw it.

13 Q. Two years after you signed the  
14 agreement with Mr. Murphy; right?

15 A. Signed the agreement with Mr. Murphy  
16 on the subsequent cases; yes.

17 Q. And you wrote a letter to  
18 Mr. Pasarero saying there was no agreement  
19 with you and Mr. Murphy.

20 A. When I wrote to Mr. Pasarero was  
21 concerning the Cabeza case. The -- I had the  
22 Cabeza case pulled because that was my case.  
23 I looked through it and there was no -- and I  
24 knew there was no cooperation agreement with  
25 regard to Murphy.

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1 Q. So, you're saying you didn't lie to  
2 Mr. Pasarero and tell him there was no  
3 agreements when you knew there were; right?

4 A. How would I -- I wouldn't lie. The  
5 agreements were in Mr. Murphy's files, the  
6 court files of Mr. Murphy. So, there would be  
7 no -- the subsequent agreements were filed in  
8 Mr. Murphy's court files with the Court.

9 Q. What about Mr. Pasarero's language  
10 when he requests, "In addition to the  
11 forgoing, I request photocopies of any  
12 cooperation or debriefing agreements between  
13 your office and the following individuals;  
14 Ciscro Murphy, Lakisha Smith, Martin Johnson  
15 and Jeffrey Marshall."

16 What about that language led you to  
17 believe that he was asking just about the  
18 Cabeza case?

19 A. The letter was written to Mr. Hollman.  
20 Mr. Hollman then gave me the letter after he  
21 was -- after he whatever he did with the  
22 letter, I don't know, but he gave it to me  
23 after that and I fulfilled my -- what I felt  
24 was my obligation to take care of the request  
25 with regard to the Cabeza case.

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1 Q. Who agreed -- who made the agreement  
2 with Mr. Murphy; Mr. Hollman or you?

3 A. They were in the case files that  
4 Mr. Hollman tried.

5 Q. Who made the agreement?

6 A. I did.

7 Q. Who authorized the two to life deal  
8 for Mr. Murphy?

9 A. I guess I did.

10 THE COURT: Can I see that letter?

11 MR. BARKET: Yes, this is the letter  
12 -- 12 is for Mr. Pasarero and 13 is Mr.  
13 Vecchione's response.

14 (Petitioner's Exhibit 13 marked for  
15 identification)

16 THE COURT: So, I just want to  
17 understand, when you wrote in this letter that  
18 with respect to the other items, there are no  
19 agreements between this office and Ciscro  
20 Murphy --

21 THE WITNESS: Yes, Judge, that had to  
22 do with the Cabeza case.

23 THE COURT: And you understood this  
24 letter to be limited to the Cabeza case?

25 THE WITNESS: No, my portion of --

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1 what I needed to answer was -- my  
2 understanding was that what I needed to answer  
3 was limited to the Cabeza case because  
4 Mr. Hollman was not familiar with the Cabeza  
5 case. The letter was addressed to Hollman and  
6 I took care of answering the portion of the --  
7 with regard to the Cabeza case. I had the  
8 Cabeza case pulled to refresh my memory  
9 because it was two years later and when I did,  
10 I gave -- I sent to Nassau county, the  
11 cooperation agreements that were in the Cabeza  
12 case.

13 MR. BARKET: I have nothing further at  
14 this time.

15 CROSS-EXAMINATION

16 BY MR. DEMARTINI:

17 Q. Good afternoon, Mr. Vecchione.

18 A. Hello.

19 Q. When Ciscro Murphy first came to your  
20 office, I think you said that was some time at  
21 the beginning of February?

22 A. I believe so; yes.

23 Q. What do you remember Mr. Murphy  
24 telling you at that time?

25 A. He told me that he knew that I was the

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1 prosecutor in the Cabeza-Marshall case and he  
2 told me that he had been in jail with Jeffrey  
3 Marshall and that he had some paralegal  
4 background. And Marshall had asked him to  
5 help him prepare papers and specifically, to  
6 help him prepare a false alibi for the Cabeza  
7 case.

8 He was going to help prepare his  
9 father to testify that he was upstairs with  
10 him as opposed to being the lookout downstairs  
11 near the liquor store.

12 Q. Did he tell you why he had come to see  
13 you?

14 A. Yes, he did.

15 Q. And to the best of your recollection,  
16 what did he tell you with respect to that?

17 A. He told me that he was very angry with  
18 Mr. Marshall because Mr. Marshall had  
19 threatened him and had him beaten up.

20 Q. What was your response to him?

21 A. I don't know my specific response. I  
22 probably asked him some questions about it but  
23 I don't remember what my response was.

24 Q. Did he tell you that he had open  
25 cases?

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1 A. Yes, he did.

2 Q. Did you have any response to that?

3 A. I'm sure I did but I don't recall what  
4 the response was. I may have just asked him  
5 what the open cases were about. I'm sure I  
6 must have done that. But I don't specifically  
7 recall what my response was.

8 Q. Did you ask him at any time if he was  
9 looking for a deal?

10 A. I asked him what he was -- yes, I do  
11 remember asking him that because that would be  
12 the logical thing to ask him and he said I  
13 don't want anything. He says I am -- and he  
14 used the vernacular, "I'm pissed off at  
15 Marshall and this is why I am coming in."

16 Q. Now after -- did he tell you when he  
17 came -- where he had come from, if he had been  
18 in jail --

19 A. Yes.

20 Q. -- prior to his coming to see you?

21 A. Yes, he did.

22 Q. What did he tell you with respect to  
23 that?

24 A. He told me that he was just released.  
25 That the people weren't ready on his latest

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1 case and he was released as a result of that.

2 Q. Now at some time after speaking with  
3 him, did you, in fact, pull both of his open  
4 cases?

5 A. Yes.

6 Q. And what were you able to ascertain  
7 with respect to the newer case; the rape case?  
8 Had he just been released?

9 A. It appeared from the file that he had  
10 been released as a result of a CPL 180.80  
11 violation where we weren't ready to proceed  
12 with either a grand jury indictment or a  
13 hearing within the prescribed period of time.

14 Q. And in relation to the day that you  
15 remember his coming to you, when did this  
16 release on the CPL 180.80 for the rape case  
17 occur, if you know?

18 A. Specifically, I don't remember. I  
19 would -- I just recall it being within days  
20 but I don't recall specifically.

21 Q. And how did you leave -- well, what  
22 did you tell Mr. Murphy at the end of this  
23 interview?

24 A. I told him that I would look into  
25 things and evaluate it and at some point, if I

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1 needed him again, I would get in touch with  
2 him.

3 Q. And when is the next time that you  
4 recall actually seeing Mr. Murphy?

5 A. When he testified, March 17.

6 Q. Now was that in the morning or in the  
7 afternoon?

8 A. It was in the late afternoon.

9 Q. And I think you said you had a brief  
10 time when you spoke with him before he  
11 testified?

12 A. Yes.

13 Q. And what went on -- where was that  
14 interview conducted?

15 A. In an interview room in the hall --  
16 that was in the corridor of the fourth floor  
17 at 360 Adams Street, the supreme court  
18 building.

19 Q. Who was present during that interview?

20 A. To the best of my recollection, it was  
21 myself, Mr. Murphy, and two detective  
22 investigators from my office.

23 Q. Would they have been the detective  
24 investigators who brought him over to court?

25 A. Yes.

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1 Q. And what did you tell Mr. Murphy at  
2 that time?

3 A. I came into the room. He was already  
4 in the room and I said to him, "Do you  
5 remember me."

6 "Yes." He answered, "Yes, he did."

7 And I said to him, "Well, the case is  
8 on trial and what I want to know is are you  
9 willing to testify to what you told me in the  
10 office?"

11 And he said, "Yes."

12 And I said to him, "All I want you to  
13 do is to tell me what you told me. Tell the  
14 Judge and the jury what you told me in the  
15 office."

16 And I may have, at that point, I must  
17 have gone over it with him at that point as to  
18 what he was going to say.

19 And I said to him, "I am going to ask  
20 you whether you have two open cases. And I'm  
21 not going to go into the background of those  
22 cases."

23 And I then said to him, "I'm going to  
24 ask you if we have any deals, any promises,  
25 has anybody made any promises to you, do we

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1 have any understandings? And what would your  
2 answer be?"

3 And he said, "There are none."

4 I said, "Okay. Just go in and tell  
5 the Court what you know."

6 Q. And about how long was this prep or  
7 interview of --

8 A. It wasn't very long because the judge  
9 did not give me a long time. It was -- as I  
10 said before, it was the end of the day. It  
11 was the end of the trial. The judge was  
12 looking to end it and he gave me just a few  
13 minutes to go out, speak to him and then come  
14 in and tell him whether or not we were going  
15 to use him.

16 Q. And did you, in fact, go back into the  
17 courtroom after this brief interview?

18 A. Yes, I did.

19 Q. What happened when you went into the  
20 courtroom?

21 A. I went back into the courtroom and I  
22 told him that I was going to use him but then  
23 Mr. Harrison had asked to approach the bench.  
24 When we got to the bench, I said to the judge,  
25 the problem is his lawyer is not here; Fiol

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1 was not there.

2 And the judge then said don't worry  
3 about it. It's the end of the day or words to  
4 that effect. Don't worry about it. I'll  
5 protect him. He's just -- let's get finished  
6 with this. Put him on. I'm not going to let  
7 you go into any of the underlying portions of  
8 his testimony (sic). And --

9 THE COURT: Of his testimony?

10 THE WITNESS: I'm sorry, of his  
11 pending cases.

12 And we went back to the table. That  
13 was an off the record conversation. We went  
14 back to the table and we brought Mr. Murphy  
15 in.

16 Q. Now, in your direct examination, did  
17 you ask him if he had open cases?

18 A. I believe I did; yes.

19 Q. And did he say that he did?

20 A. Yes.

21 Q. How many?

22 A. I think he said he had two.

23 Q. On cross-examination, did the nature  
24 of the open cases come out?

25 A. Yes.

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1 Q. Was one described as a gun case?

2 A. Yes.

3 Q. How was the second one described?

4 A. I believe Mr. Murphy described it as  
5 an assault on a woman or something like that;  
6 words to that effect.

7 Q. And were both cases, both open cases,  
8 listed on the NYSID or rap sheets that you  
9 handed Mr. Harrison?

10 A. Yes.

11 Q. Now going back to after -- right after  
12 Mr. Murphy comes to your office the first  
13 time, had you decided after you met him that  
14 first time, whether or not you were going to  
15 use him --

16 A. No.

17 Q. -- at that point?

18 A. No, I did not decide that at that  
19 time.

20 Q. What was your impression of Mr. Murphy  
21 after first meeting him?

22 A. Well, he was a witness who I knew had  
23 some good information because I did receive  
24 the alibi notice, so I knew that there was  
25 going to be an alibi defense.

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1                   And he sounded as if he knew  
2 Mr. Marshall. I mean, I hadn't checked it out  
3 yet to see whether they were in jail together.  
4 It was just preliminary. So, from -- at first  
5 blush, he sounded like he knew what he was  
6 talking about but I was skeptical in that he  
7 was a supposed friend of Marshall's, he was in  
8 jail, he had these two cases. So, I wasn't  
9 completely sold on whether or not I was going  
10 to use him at that point.

11                  Q. Now at some point after you pulled the  
12 gun case -- are you -- let me just go back.  
13 Are you familiar with what's known as a felony  
14 waiver offer sheet?

15                  A. Yes, I am.

16                  Q. And what exactly is that?

17                  A. That would be a document that's put  
18 into the file by a -- generally a grand jury  
19 supervisor who would review the case before it  
20 was presented to the grand jury and make an  
21 offer to the defendant to plead guilty in lieu  
22 of indictment.

23                  MR. DEMARTINI: Mr. Barket, I am going  
24 to be asking --

25                  MR. BARKET: Yes, I've seen it.

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1 That's fine. Go right ahead.

2 MR. DEMARTINI: That's Government  
3 Exhibit 3.

4 (Government's Exhibit 3 marked for  
5 identification)

6 BY MR. DEMARTINI:

7 Q. Can you take a look at that, please?

8 A. Yes.

9 Q. What do you recognize that to be?

10 A. This was a felony waiver offer sheet  
11 that we were using back in 1992, '93.

12 Q. And does it pertain to a particular  
13 case?

14 A. It says Ciscro Murphy and it's got a  
15 docket number. And then it says, "The waiver  
16 offer attempt CPW third degree," which would  
17 be criminal possession of a weapon in the  
18 third degree, "two to four" and it says,  
19 "mandatory persistent" underneath it.

20 Q. So would that have been the initial  
21 offer that was made prior to any indictment on  
22 the gun case for Mr. Murphy?

23 A. Yes.

24 THE COURT: That was made before he  
25 visited you, I assume.